



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 25 2004

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Fred L. Shusterich, President
Midwest Energy Resources Co.
P.O. Box 787,
Superior, Wisconsin 54880

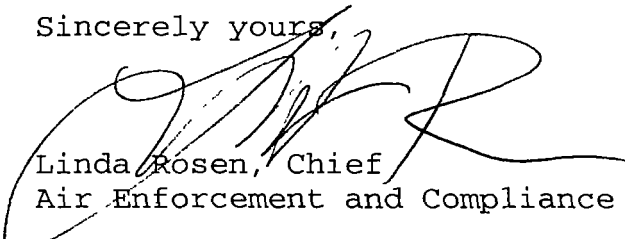
Dear Mr. Shusterich:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at Midwest Energy Resource Company's (MERC) Superior, Wisconsin facility, CAA Docket No. **CAA-05-2004 0038**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on **AUG 25 2004**.

Pursuant to paragraph 31 of the CAFO, MERC must pay the civil penalty within 30 days of **AUG 25 2004**. Your check must display the case docket number, **CAA-05-2004 0038** and the billing document number, **050309031**.

Please direct any questions regarding this case to Louise Gross, Associate Regional Counsel, (312) 886-6844.

Sincerely yours,


Linda Rosen, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Midwest Energy Resources Co.
Superior, Wisconsin, et al.,

Respondent.

) Docket No.

CAA-95-2004 0038

) Consent Agreement and Final
) Order
)
)
)

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted and settled pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Midwest Energy Resources Company (MERC), a corporation doing business in Wisconsin.

4. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator of the U.S. EPA (the

US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5
CHICAGO, ILLINOIS

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CHICAGO

Administrator) may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for violations of the Act that occurred on or after January 31, 1997; and of up to \$32,500 per day of violation, up to a total of \$270,000, for violations of the Act that occur on or after March 15, 2004.

5. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

6. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

II. LEGAL AND FACTUAL BACKGROUND

7. On January 18, 1995, U.S. EPA approved Wisconsin's operating permit rule as part of Wisconsin's State implementation plan (SIP), and in satisfaction of the federal requirements for establishing federally enforceable State operating permits (FESOP). June 28, 1989 (60 Fed. Reg. 3538).

8. MERC owns and operates a coal transfer facility located at West Winter Street in Superior, Wisconsin (the Superior facility).

9. On January 25, 1999, the Wisconsin Department of Natural Resources (WDNR) issued to MERC a FESOP, Permit #816013330-F01, to operate the Superior facility.

10. Part I of the FESOP, Conditions A.1.b.(2), A.1.b(3)(a) and A.1.b(3)(b), contains provisions applicable to the Rail Car Dumping Station, including requirements relating to baghouse pressure drop and scrubber operation.

11. Part I of the FESOP, Conditions C.1.b.(1), D.1.b.(1), E.1.b.(1), F.1.b(1) and G.1.b.(1), contains provisions applicable to the Coal Transfer Conveyors, including requirements relating to baghouse and water spray operation.

12. Part II of the FESOP, Condition N.1.b.(2), requires MERC to include in its annual certification reports the compliance status of the source with respect to each term or condition in the FESOP.

13. On July 25, 2003, U.S. EPA issued to MERC a Notice of Violation (NOV). The NOV alleged that MERC violated the FESOP provisions referenced in paragraphs 10 - 12, above.

14. On September 17, 2003, representatives of MERC and U.S. EPA held a conference to discuss the NOV. The parties have had subsequent discussions concerning this matter.

III. VIOLATIONS

15. For numerous days from October 1999 to December 2002, MERC has operated the Superior facility in violation of conditions A.1.b.(2), A.1.b.(3)(a) and A.1.b.(3)(b) of its FESOP.

16. For numerous days from October 1999 to December 2002, MERC has operated the Superior facility in violation of Conditions C.1.b(1), D.1.b(1), E.1.b(1), F.1.b(1) and G.1.b(1) of its FESOP.

17. In its annual certification reports for calendar years 2000, 2001, and 2002, MERC failed to correctly indicate the compliance status of its Rail Car Dumping Station and Coal Transfer Conveyors, in violation of Condition N.1.b.(2) of the FESOP.

IV. TERMS OF SETTLEMENT

18. The parties agree that settling this action is in the public interest and that the entry of this Consent Agreement and Final Order (CAFO) without the filing of a Complaint or engaging in further litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before the taking of any testimony upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

19. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (b)(3).

20. MERC admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations.

21. MERC consents to the issuance of this CAFO and the assessment of the civil penalty in accordance with Section V of this CAFO.

22. MERC consents to all of the conditions in this CAFO.

23. MERC waives its right to a hearing, as provided at 40 C.F.R. § 22.15(c).

24. MERC waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

25. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413, for the violations alleged in Section III of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of MERC arising from the violations alleged in this CAFO or liability related to violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of MERC to comply with such laws and regulations.

26. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

27. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

28. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

29. "Parties" shall mean U.S. EPA and MERC.

V. CIVIL PENALTY

30. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of MERC's business, the economic impact of the penalty on MERC's business, MERC's full compliance history and good faith efforts to comply, the duration of the violations, payments by MERC of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, MERC's cooperation, and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$69,750.

31. MERC must pay the \$69,750 civil penalty by cashier's or certified check payable to the "Treasurer, United States of

America," in accordance with paragraphs 32 and 33, below, within thirty days (30) of the effective date of this CAFO.

32. MERC must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

33. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Louise Gross, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

34. This civil penalty is not deductible for federal tax purposes.

35. If MERC does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty

with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. MERC will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. MERC will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VI. GENERAL PROVISIONS

37. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in Section III of this CAFO.

38. Nothing in this CAFO restricts U.S. EPA's authority to seek MERC's compliance with the Act and other applicable laws and regulations.

39. This CAFO does not affect MERC's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

40. This CAFO constitutes an "enforcement response," as that term is used in U.S. EPA's "Clean Air Act Stationary Source Civil Penalty Policy," to determine MERC's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

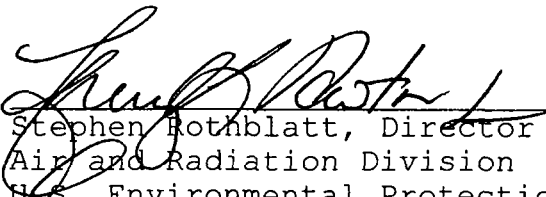
41. The terms of this CAFO bind MERC, its successors, and assigns.

42. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection Agency,
Complainant**

Date:

8/19/04



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

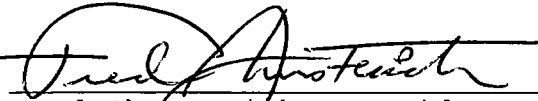
CONSENT AGREEMENT AND FINAL ORDER
Midwest Energy Resources Company
Docket No. CAA-5-2003-

~~CAA-05-~~ 2004 0038

Midwest Energy Resources Company,
Respondent

Date: July 23, 2004

By:


Fred Shusterich, President
Midwest Energy Resources Company

CONSENT AGREEMENT AND FINAL ORDER
Midwest Energy Resources Company
Superior, Wisconsin
Docket No.

~~CAA-05-~~ 2004 0038

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: August 24, 2004



Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2004 0038 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to MERC and MERC's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Fred Shusterich, President
Midwest Energy Resources Company
P.O. Box 787
Superior, Wisconsin 54880

Thomas P. McElligott
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497

on the 25th day of August, 2004.

Shanee Rucker

Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000615586585